UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

ROBERT FERRELL, individually and on behalf of all others similarly situated, *Plaintiff*, v. SEMGROUP CORPORATION, *Defendant*, v. CYPRESS ENVIRONMENTAL MANAGEMENT-TIR, LLC *Intervenor-Defendant.*	Civil Action No. 19-cv-00610-GKF-JFJ Judge Gregory K. Frizzell Magistrate Judge Jodi F. Jayne

CYPRESS ENVIRONMENTAL MANAGEMENT-TIR, LLC'S RESPONSE TO SEMGROUP CORPORATION'S MOTION TO STAY PROCEEDING

This Court stayed Robert Ferrell's claim pending appeal on whether Ferrell's claims should be arbitrated. (Dkt. 109.) This Court did not stay the claim of Vernon Oehlke ("Oehlke"), who has consented to join Ferrell's FLSA lawsuit. (Dkts. 57, 109.) Defendant SemGroup Corporation ("SemGroup") has now moved to stay this case in its entirety.

There are practical reasons for staying the entire case. This is a curious case because it seeks to press a collective action under the Fair Labor Standards Act ("FLSA") against the customer (SemGroup) by employees of entities that provided services to that customer: *e.g.*, Ferrell, who was actually employed by Cypress Environmental Management-TIR, LLC ("TIR").

Wholly apart from the issue of arbitration, such cases present significant manageability problems. *See, e.g., Smith v. Guidant Global*, No. 19-cv-12318, 2020 WL 4883900, at *6-7 (E.D.

Mich. 2020) (denying collective action in case involving over 100 staffing agencies supplying workers to 400 different locations for Duke Energy as unmanageable); *Gibbs v. MLK Express Services, LLC*. No. 2:18-cv-434-FtM-38MRM, 2019 WL 2635746, at *9 (M.D. Fla. June 17, 2019) (denying collective action "a 'major issue' will inevitably be whether Amazon is a joint employer" and because determining the joint employment relationship of Amazon and multitude of other vendors was unmanageable).

Arbitration imposes a particular burden in proceeding before the pending appeal is resolved. Even if a collective action might be appropriate, a court may not authorize FLSA notice to be sent to individuals with agreements to arbitrate. *See Bigger v. Facebook, Inc*., 947 F.3d 1043, 1050 (7th Cir. 2020); *In re JP Morgan Chase & Co*., 916 F.3d 494, 502-03 (5th Cir. 2019). Thus, it will be necessary to resolve the issue of arbitration for Ferrell and other TIR employees first (and perhaps arbitration issues for employees of other entities doing business with SemGroup who are equally encompassed in this case's proposed collective action).

Of course, the Tenth Circuit might not allow arbitration. But that potential is an equally compelling reason to stay the entire case. Absent a stay, Oehlke proposes to proceed ahead without Ferrell: *e.g*., taking depositions to establish that SemGroup is actually the employer of himself and the other proposed members of the collective action and being deposed on that same issue, *etc*. Yet, with a stay encompassing TIR and Ferrell, that is all effort that will need to be repeated if arbitration is denied by the Tenth Circuit. The best course is often the simplest. Here, it is to stay Ferrell's collective action in its entirety pending the appeal of this Court's order denying TIR's motion to compel arbitration.

Dated: October 28, 2020

Respectfully submitted,

/s/ Rachel B. Cowen
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CERTIFICATE OF SERVICE

☒ I hereby certify that on October 28, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing.

☐ I hereby certify that on _____, 2020, I served the foregoing document by mail on the following, who are not registered participants of the ECF System (None):

/s/ Rachel B. Cowen